Paper No. 31

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILLIAM CLAYTON, JR.
and
DMITRY SHCHEDRIN

Appeal No. 1998-1639
Application No. 08/424,259

HEARD: OCTOBER 24, 2000

Before HAIRSTON, JERRY SMITH, and LEVY, Administrative Patent Judges.

HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 4, 8, 9, 11, 13, 14, 16, 19, 22 through 24 and 29 through 33. In a first Amendment After Final (paper number 16), claims 1 and 29 were amended, and claim 2 was canceled. After submission of this amendment, the examiner allowed claims 1, 3, 4, 8, 9, 11 and 29 through 31, and objected to

claims 14 and 16 (paper number 20). In a second Amendment After Final (paper number 22), claims 3 and 19 were amended. Accordingly, claims 13, 19, 22 through 24, 32 and 33 remain before us on appeal.

The disclosed invention relates to a chassis dynamometer in which a stationary field coil induces eddy currents in a rotor wheel to apply a braking force to the rotor wheel. The rotor wheel is in the form of a drum open at one end with a hollow braking section extending axially from the open end.

Claim 13 is illustrative of the claimed invention, and it reads as follows:

> 13. In a chassis dynamometer having a base rotational inertia for simulating the inertial and road load forces which a motor vehicle would experience during operation on a road bed, the dynamometer including a frame, at least one roll rotatably mounted on the frame for engaging at least one driven wheel of the vehicle, power absorbing and inertial simulating means coupled to the roll for applying a braking force to the roll, a force transducer for providing a measure of the force applied to the vehicle wheel minus the force attributable to the dynamometer parasitic losses, means for providing a measure of the roll speed and control means responsive to the roll speed and the force applied to the vehicle wheel for controlling the power absorbing means, the improvement of the power absorbing and inertial simulating means comprising:

a combined power absorbing and inertia simulating unit having a ferrous rotor wheel rotatably mounted on the frame for rotation with the roll and a stationary field coil arrangement positioned adjacent the rotor wheel for inducing eddy currents in the rotor wheel to apply said braking force to the wheel, the rotor wheel being in the form of a drum open at one end with a hollow braking section extending axially from the open end to a web section extending radially inwardly to a hub mounted on the shaft, the rotor wheel having a rotational inertia which is within the range of 50 to 90% of the base inertia of the dynamometer.

The reference relied on by the examiner is:

La Belle	5,385,042	Jan. 31, 1995 (filed Aug. 21, 1992)

Claims 13, 19, 22 through 24, 32 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over La Belle.

Reference is made to the brief and the answer for the respective positions of the appellants and the examiner.

OPINION

The obviousness rejection of claims 13, 19, 22 through 24, 32 and 33 is reversed.

The examiner acknowledges (Answer, page 4) that La Belle "fails to explicitly teach the rotor wheel being in the form of a 'drum' open at one end with a hollow braking section extending axially from the open end to a web section extending radially inwardly to a hub mounted on the shaft." According

to the examiner (Answer, pages 4 and 5), "the mere shape of the rotor would have been an obvious choice of design to one having ordinary skill in the art." The examiner is also of the opinion (Answer, page 5) that La Belle inherently teaches a rotor wheel having a rotational inertia that is part of the base inertia. The examiner acknowledges (Answer, page 5), however, that the dynamometer in La Belle fails to explicitly teach the specifically claimed range of 50 to 90 percent of the base inertia of the dynamometer. With respect to this specifically claimed range, the examiner is again of the opinion (Answer, page 5) that it is "deemed as being an obvious design choice to one having ordinary skill in the art."

Appellants argue (Brief, page 18) that the examiner has "failed to establish a prima facie case of obviousness." We agree with appellants' argument because the examiner's reliance on design choice to fill in the missing gaps in the teachings of La Belle is not a sufficient showing of prior art that we can review to determine whether the claimed invention is indeed obvious over the prior art. Stated differently, the examiner's opinion can not take the place of evidence.

In summary, the obviousness rejection of claims 13, 19, 22 through 24, 32 and 33 is reversed.

DECISION

The decision of the examiner rejecting claims 13, 19, 22 through 24, 32 and 33 is reversed.

REVERSED

KENNETH W. HAIRSTON Administrative Patent Judge	)	
JERRY SMITH Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
STUART S. LEVY Administrative Patent Judge	)	

KWH:hh

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